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No. 92-616

In the
Supreme Court of the United States
October Term, 1992

IN THE MATTER OF THE WELFARE OF D.L.

Stephen Sharp and Janet Sharp,
Petitioners,

vs.

Hennepin County Bureau of Social Services,
Respondent,

vs.

Hilton Walker and Inell Walker,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

RESPONDENT GUARDIAN AD LITEM'S BRIEF IN SUPPORT OF PETITION

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QUESTIONS PRESENTED

1. Whether the minor child, D.L., was denied due process and equal protection under the Fourteenth Amendment of the United States Constitution when the Minnesota courts applied relative preferences and the preferential scheme provided in Minn. Stat. § 259.28, subd. 2, which in its original version and its revised version focuses on race and ethnic heritage when considering adoption petitions.
2. Whether Minn. Stat. § 259.28, both in its original and revised version, is unconstitutionally vague in its definition and application of the terms "race" and "ethnic heritage" in adoption proceedings, and therefore violative of the due process provisions of the Fourteenth Amendment of the United States Constitution.
3. Whether the continued application of a relative preference by the Courts and governmental entities in the State of Minnesota, whether based on state statutes or common law, is violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution.

LIST OF PARTIES

Respondent Guardian ad Litem concurs with the Petitioner's List of All Parties.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

CITATIONS TO OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 6

I. *MINN. STAT. § 259.28, SUBD. 2, AND RELATED COMMON LAW DOCTRINE INVOLVING PREFERENCES IN ADOPTIONS AS APPLIED BY THE MINNESOTA SUPREME COURT ARE REPUGNANT AND CONTRARY TO THE UNITED STATES CONSTITUTION ON SEVERAL GROUNDS AND SUCH USE OF PREFERENCES IN ADOPTION PROCEEDINGS SHOULD BE REVIEWED BY THE UNITED STATES SUPREME COURT* 6

A. *Both The Original And The Revised Statute Clearly Violate The Equal Protection Doctrine Contained In The Fourteenth Amendment To The United States Constitution* 7

B. *Application Of Minn. Stat. § 259.28, Subd. 2, By The Minnesota Trial Court And As Affirmed By The Minnesota Supreme Court, Violates The Petitioners' And The Child's Due Process Rights Under The Fourteenth Amendment To The United States Constitution* 9

C. *Minn. Stat. § 259.28 Is Unconstitutionally Vague And Unenforceable* 10

II. *THE STATE OF THE LAW ACROSS THE NATION WITH REGARD TO TRANS-RACIAL ADOPTIONS AND ISSUES OF RACE AND ETHNICITY IN ADOPTIONS IS IN A CONFLICTED AND CONFUSED STATE, REQUIRING CLARIFICATION AND DIRECTION FROM THE UNITED STATES SUPREME COURT* 11

III. *THE ACTIONS OF THE MINNESOTA SUPREME COURT IN THIS MATTER REFLECT A SIGNIFICANT DEPARTURE FROM THE USUAL COURSE OF JUSTICE, FURTHER JUSTIFYING INTERVENTION BY THE UNITED STATES SUPREME COURT TO REVIEW SUCH STATUTES AND PROVIDE FURTHER DIRECTION TO STATE AND FEDERAL COURTS AND STATE LEGISLATURES DEALING WITH THE ISSUE OF RACE AND ETHNICITY IN ADOPTION PROCEEDINGS* 13

CONCLUSION 17

TABLE OF AUTHORTIES

Page

United States Constitution

Fourteenth Amendment of the United States Constitution 6, 7, 8, 9, 10

Federal Statutes and Rules

28 U.S.C. § 1257(a) 2

Indian Child Welfare Act, 25 U.S.C. §§ 1901-63 (1988) 15

Supreme Court Rule 12.4 (1991 rev. ed.) 2

State Statutes

Ark. Stat. Ann. § 9-9-102 (1991) 12

Cal. Civ. Code § 222.35; § 222.37 (Supp. 1992) 12

Conn. Gen. Stat. Ann. § 45-63 (West. Supp. 1990) 12

Ky. Rev. Stat. Ann. § 199.471 (Baldwin 1976) 12

Mass. Regs. Code tit. 110, §7,101(1)(d) (1986) 12

Md. Fam. Law Code Ann. § 5.311 (1990) 12

Minn. Stat. § 259.255 (1992) 12

Minn. Stat. § 259.28, subd. 2 (1992) 2, 6, 7, 9, 10

N.Y. Comp. Codes R. & Regs. tit. 18, § 421.18(c) (1990) 12

Ohio Admin. Code § 5101:2-48-03 (1990) 12

Wis. Stat. Ann. § 48.82(6) (West 1990) 12

State Cases

In re Adoption of Gomez, 424 S.W.2d 656, 659 (Tex. Civ. App. 1967) 12

In re B. Children, 391 N.Y.S.2d 812, 813-14 (N.Y. Fam. Ct. 1977) 12

In re D.I.S. for Adoption of S.A.U.,
494 A.2d 1316, 1327 (D.C. App. 1985) 12

In re Davis, 502 Pa. 110, 465 A.2d 614,
624 (1983) 12

In re R.M.G. & E.M.G., 454 A.2d 776 (D.C. 1982) 12

In the Matter of the Welfare of D.L.,
486 N.W.2d 375 (Minn. 1992) 1, 2

Federal Cases

Brown v. Board of Education, 347 U.S. 483 (1954) 13, 14

City of Richmond v. J.A. Crosson Company,
488 U.S. 469 (1989) 14

Compos v. McKeithen, 341 F.Supp. 264,
266 (E.D.La. 1972) 12

Drummond v. Fulton County, 563 F.2d 1200,
1205 (5th Cir. 1977) cert. denied,
432 U.S. 905 (1978) 12

Grayned v. City of Rockford, 408 U.S. 104,
108-09 (1972) 10

Hirabayashi v. United States, 320 U.S. 81, 100 (1943) ... 8

In re Adoption of Minor, 228 F.2d 446,
448 (D.C. Cir. 1955) 12

Korematsu v. United States, 323 U.S. 214, 216 (1944) 8

Loving v. Virginia, 388 U.S. 1 (1966) 7, 8, 9, 13

McLaughlin v. Pernsley, 693 F.Supp. 318,
324 (E.D.Pa. 1988) 12

Mississippi Choctaw v. Holyfield, 490 U.S. 30 (1989) ... 15

Palmore v. Sidoti, 466 U.S. 429 (1983) 7, 9, 13

Regents of the University of California v. Bakke,
438 U.S. 265, 361 (1978) 8

Smith v. Goguen, 415 U.S. 566, 572-73 (1974) 10

Secondary Sources

Bartholet, *Where do Black Children Belong? The Politics of Race Matching in Adoption,* 139 U. of Penn. L. Rev. 1163 (1991) 6, 7, 8, 9, 10, 11, 14, 15

Bauerlein, *Why Doesn't the U.S. have a Family Policy?* Sept/Oct. 1991 Utne Reader 17 15

Bowen, *Cultural Convergences and Divergences: The Nexus Between Putative Afro-American Family Values and the Best Interests of the Child,* 26 J. Fam. L. 487 (1987-88) 6

Grossman, *A Child of Different Color: Race as a Factor in Adoption and Custody Proceedings,* 17 Buffalo L. Rev. 303 (1968) 6

Hollinger, *Beyond the Best Interests of the Tribe: The Indian Child Welfare Act and the Adoption of Indian Children,* 66 U. Det. L. Rev. 451 (1989) 15

Howard, *Transracial Adoption: Analysis of the Best Interests Standard,* 59 Notre Dame L. Rev. 503 (1984) 6

Johnson, *The Changing Family,* 57 Vital Speeches of the Day 393 (April 15, 1991) 15

Note, *Constitutional Law: Race as a Factor in Interracial Adoptions,* 32 Cath. U.L. Rev. 1022 (1983) 6

Note, *Transracial Adoption: A Critical View of the Court's Present Standards,* 28 J. Fam. L. 303 (1989-90) 6

O'Brien, *Race in Adoption Proceedings: The Pernicious Factor,* 21 Tulsa L.J. 485 (1986) 6

Perry, *Race and Child Placement: The Best Interest Test and the Cost of Discretion,* 29 J. of Fam. L. 51 (1990) 6

Popinoe, *Break-up of the Family: Can we Reverse the Trend?* 119 U.S.A. Today 50 (May 1991) 15

Sorrentino, *Family Troubles,* 15 The Wilson Quarterly 18 (Spring 1991) 15

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ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

RESPONDENT GUARDIAN AD LITEM'S BRIEF IN SUPPORT OF PETITION

Respondent Guardian ad Litem, Jane Esbensen Moore, joins Petitioners Stephen and Janet Sharp in respectfully requesting that this Court grant the Sharps' petition for review of the Minnesota Supreme Court's opinion in this case, *In the Matter of the Welfare of D.L.*, 486 N.W.2d 375 (Minn. 1992).

CITATIONS TO THE OPINIONS BELOW

The opinion of the Minnesota Supreme Court is reported at 486 N.W.2d 375 (Minn. 1992) and the opinion of the Minnesota Court of Appeals is reported at 479 N.W.2d 408 (Minn. Ct. App. 1991). The full text of both opinions is contained in the Petitioners' appendix.

JURISDICTION

On June 12, 1992, the Minnesota Supreme Court filed its decision affirming the Minnesota Court of Appeals decision cited at 479 N.W.2d 408 (Minn. Ct. App. 1991). Petitioners Sharps filed their Petition for a Writ of Certiorari in a timely fashion on September 9, 1992, and with an assertion of jurisdiction pursuant to 28 U.S.C. § 1257(a). Respondent Guardian ad Litem now submits its supporting response pursuant to Supreme Court Rule 12.4 (1991 rev. ed.) and instructions from the office of the Clerk of the United States Supreme Court within twenty days of receipt of notice of admission of the Petitioners' attorneys to the United States Supreme Court Bar.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Respondent Guardian ad Litem concurs with the Petitioners' statement of constitutional and statutory provisions, except that she believes it is critical that this Court also have before it the revised Minn. Stat. § 259.29, subd. 2. This statute was amended by the Minnesota legislature after the Minnesota Court of Appeals declared the statute unconstitutional and before the matter was heard by the Minnesota Supreme Court:

Minn. Stat. § 259.28, subd. 2 (1992):

Subd. 2 Protection of heritage or background. The policy of the state of Minnesota is to ensure that the best interests of children are met by requiring

due consideration of the child's race or ethnic heritage in adoption placements. For purposes of intercountry adoptions, due consideration is deemed to have occurred if the appropriate authority in the child's country of birth has approved the placement of the child.

In reviewing adoptive placement, the court shall consider preference, and in determining appropriate adoption, the court shall give preference, in the absence of good cause to the contrary, to (a) a relative or relatives of the child, or, if that would be detrimental to the child or a relative is not available, to (b) a family with the same racial or ethnic heritage as the child, or if that is not feasible, to (c) a family of different racial or ethnic heritage from the child that is knowledgeable and appreciative of the child's racial or ethnic heritage.

If the child's genetic parent or parents explicitly request that the preference described in clause (a) or in clauses (a) and (b) not be followed, the court shall honor that request consistent with the best interests of the child.

If the child's genetic parent or parents express a preference for placing the child in an adoptive home of the same or a similar religious background to that of the genetic parent or parents, in following the preferences in clause (a) or (b), the court shall place the child with a family that also meets the genetic parent's religious preference. Only if no family is available as described in clause (a) or (b) may the court give preference to a family described in clause (c) that meets the parent's religious preference.

STATEMENT OF THE CASE

The Guardian ad Litem concurs with the Sharps' Statement of Facts, Adoption Proceedings and Appellate History as contained in their Petition for the Writ of Certiorari. The Guardian ad Litem would, however, like to provide the Court with some additional detail regarding her role as a party in these proceedings.

The Guardian's role in this matter from the beginning has been to look out for the child's best interests after the child first became involved in Juvenile Court, after Hennepin County moved to terminate the parental rights of the child's biological mother and after Hennepin County introduced the child's maternal grandparents as possible permanent custodians in opposition to the petitioner foster parents. Both the petitioner foster parents and the grandparents indicated and pursued desires to adopt the child, thus precipitating the litigation here at issue. The Guardian visited the foster home and observed the interaction of the child and foster parents. She also visited the grandparents in Virginia, and observed visitations between the grandparents and the child.

At the trial on the adoption petitions, the Guardian was called upon to make a recommendation as to which petition would be in the child's best interests. At that time, she stated that she was unable to make a recommendation either way, primarily because the trial judge at the start of trial had determined that the Petitioners' adoption petition would be excluded from consideration at that time and only the grandparents' adoption petition would be dealt with. The Guardian believed that a consideration of the best interests of the child required that both petitions be considered and all relevant evidence regarding both petitions be presented.

In the appeals to the Minnesota Court of Appeals and the Minnesota Supreme Court, the Guardian noted her opposition to Minn. Stat. § 259.28, subd. 2, with its preferences for same race and ethnic background; its preference for relatives; and its unequal treatment of children depending on the manner in which they enter the Juvenile Court and adoption system. In the Guardian's opinion, as more fully stated in the appellate

briefs, the Minnesota courts should have considered the child's best interests without any of the preferences – whether these be preferences based on family, race or ethnic heritage. For that reason, she supports the Petitioners' request for the Writ of Certioari so that this Court will review the decision of the Minnesota Supreme Court in this matter.

REASONS FOR GRANTING THE WRIT

I. *MINN. STAT. § 259.28, SUBD. 2, AND RELATED COMMON LAW DOCTRINE INVOLVING PREFERENCES IN ADOPTIONS AS APPLIED BY THE MINNESOTA SUPREME COURT ARE REPUGNANT AND CONTRARY TO THE UNITED STATES CONSTITUTION ON SEVERAL GROUNDS AND SUCH USE OF PREFERENCES IN ADOPTION PROCEEDINGS SHOULD BE REVIEWED BY THE UNITED STATES SUPREME COURT.*

The Minnesota statute at issue in this matter raises the question of the state's role in regulating foster parent adoptions, trans-racial adoptions and trans-cultural adoptions. The statutory scheme in Minnesota, along with the interpretations by Minnesota common law and slight modifications by the Minnesota legislature, are all in violation of such fundamental constitutional principles as the right to equal protection, due process of the law, and the right to the people to have statutes that are not so vague that their meaning cannot be understood and applied in a reasonable fashion. Disputes raising such important constitutional issues are matters appropriately reviewed by this Court.[1]

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[1] As an indication of the importance of the topic of racial and ethnic preferences in adoption, *see e.g.*, Bartholet, *Where do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. of Penn. L. Rev. 1163 (1991); Perry, *Race and Child Placement: the Best Interest Test and the Cost of Discretion*, 29 J. of Fam. L. 51 (1990); Bowen, *Cultural Convergences and Divergences: The Nexus between Putative Afro-American Family Values and the Best Interests of the Child*, 26 J. Fam. L. 487 (1987-88); Grossman, *A Child of a Different Color: Race as Factor in Adoption and Custody Proceedings*, 17 Buffalo L. Rev. 303 (1968); Howard, *Transracial Adoption: Analysis of the Best Interests Standard*, 59 Notre Dame L. Rev. 503 (1984); O'Brien, *Race in Adoption Proceedings: The Pernicious Factor*, 21 Tulsa L.J. 485 (1986); Note, *Constitutional Law: Race as a Factor in Interracial Adoptions*, 32 Cath. U.L. Rev. 1022 (1983); Note, *Transracial Adoption: A Critical View of the Court's Present Standards*, 28 J. Fam. L. 303 (1989-90).

A. *Both The Original And The Revised Statute Clearly Violate The Equal Protection Doctrine Contained In The Fourteenth Amendment To The United States Constitution.*

Minn. Stat. § 259.28, subd. 2, prior to the legislature's 1992 modification, was struck down by the Minnesota Court of Appeals as violative of the Equal Protection Clause. Prior to the modification, the statute only sought to protect the heritage or racial backagground of minority children. The Court of Appeals correctly struck this down as violative of the Equal Protection Clause. As this Court has previously observed in *Loving v. Virginia,* 388 U.S. 1 (1966) and *Palmore v. Sidoti,* 466 U.S. 429 (1983), the fundamental purpose of the Equal Protection Clause of the Fourteenth Amendment is to proscribe all invidious classifications based on race or ethnic background. In *Loving,* this Court held it unconstitutional for the State to prohibit interracial marriage, while in *Palmore,* this Court prohibited the use race in deciding which two biological parents should have custody of their children. Clearly, the Minnesota statute prior to revision applied only to children of minority racial and minority ethnic heritage who were being adopted and set up a preference scheme based on such prohibited classifications. The Minnesota Supreme Court did not address the finding of the statute to be unconstitutional by the Court of Appeals. Under the same logic of *Loving* and *Palmore,* the statute is unconstitutional and this Court must review this issue.[2]

When the case was appealed to the Minnesota Supreme Court, despite the issues being raised, that court made no ruling on whether the subsequently modified statute was still in violation of the Fourteenth Amendment. The Guardian ad

[2] Bartholet makes the following trenchant observation regarding the critical constitutional issue raised by this dispute: "Current racial matching policies are in conflict with the basic law of the land on race discrimination. And they are anomalous. In no other area do state and state-licensed decisionmakers use race so systematically as the basis for action. In no other area do they promote the use of race so openly. Indeed, in most areas of our community life, race is an absolutely impermissible basis for classification." Bartholet, *supra* note 1, at 1226.

Litem contends that even though the Minnesota legislature removed the specific reference to minority children and now applies the preferences contained in the statute to all children based on their racial and ethnic heritage, the statute is still based on classifications of race and ethnicity, a situation impermissible under the Equal Protection Clause of the Fourteenth Amendment.

As this court indicated in *Loving v. Virginia,* the fact that racial or ethnic classifications apply to all people of all races and ethnic backgrounds does not in and of itself make the statute viable under the Equal Protection Clause. 388 U.S. at 8. Over the years, the Supreme Court has consistently repudiated distinctions between citizens based solely on ancestry as being odious to a free people whose institutions are founded upon the doctrine of equality. Thus, such classifications are to be subjectd to the most rigid scrutiny. 388 U.S. at 11 (citing *Hirabayashi v. United States,* 320 U.S. 81, 10 (1943); *Korematsu v. United States,* 323 U.S. 214, 216 (1944)). *See also, Regents of the University of California v. Bakke,* 438 U.S. 265, 361 (1978) (allegedly benign racial classifications should be scrutinized carefully to ensure that they are truly benign in impact and do not serve to disadvantage their supposed beneficiaries).

Even the revised statute that applies to all children involved in adoptions, regardless of their race or ethnic background, continues to violate the Constitution as a result of the adoption decision continuing to be based heavily on ethnic or racial criteria. Based on her exhaustive research into the issue of transracial adoption, Elizabeth Bartholet has considered statutory schemes similar to the one here at issue and observed that we know that minority children are disproportionately represented in the population of children waiting for adoptive homes, they spend longer waits than white children, and they are less likely to be eventually placed. Agencies apply significantly different parental screening criteria to prospective black adoptive parents than they do to white parents in order to increase prospects for in-race

placements.[3] Thus, even though the statute now on its face applies to *all* children, it will continue to affect more minority children and inherently violate the Equal Protection Clause.

The factors of race and ethnic background should simply have no bearing on whether to grant or deny an adoption petition. Rather, the test more appropriately should remain focused on the best interests of the child – whether that means the child is adopted by parents of the same race or same ethnic background or different race or different ethnic background. The Minnesota Supreme Court has not adequately addressed the issues raised by the Guardian ad Litem and Petitioners herein, the statute as modified by the Minnesota legislature continues to contain impermissible classifications by race and ethnicity, and this significant constitutional issue must be reviewed by this Court.

B. *Application Of Minn. Stat. § 259.28, Subd. 2, By The Minnesota Trial Court And As Affirmed By The Minnesota Supreme Court, Violates The Petitioners' And The Child's Due Process Rights Under The Fourteenth Amendment To The United States Constitution.*

At the trial court level in this case, when applying the statute at issue, the trial court judge did not allow the Petitioners the right to have their adoption petition reviewed and the best interests of the child evaluated under their petition. Rather, the court limited the trial to focusing on the grandparents' petition. Such preference analysis has deprived the child and the Petitioners of their right to pursue the fundamental task of creating a family through the means of adoption. This Court strongly suggested in *Loving* and *Palmore,* cases involving marriage and custody, that the state should stay out of the business of promoting one particular view of families. *See* 388 U.S. at 12 and 466 U.S. at 433. That same logic applies in the context of adoption.

The Minnesota statutory scheme here in issue results in a deprivation of a fundamental liberty interest in creating a

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[3] Bartholet, *supra* note 1, at 1199-1201.

family through adoption. It violates the Due Process Clause of the Fourteenth Amendment and is impermissibly based on suspicious classifications of race and ethnicity. All of this is directly subversive of the principle of equality that lies at the very heart of the Fourteenth Amendment. The proceedings implicity approved by the Minnesota Supreme Court and the statutory scheme also approved by the Minnesota Supreme Court raise significant constitutional issues that must be addressed by this court.

C. *Minn. Stat. § 259.28 Is Unconstitutionally Vague And Unenforceable.*

The Fourteenth Amendment to the United States Constitution guarantees citizens of the United States the right of due process. Inherent in this guarantee is the right to a clear understanding of what a statute provides and a requirement that legislatures enact laws with reasonably clear guidelines so as to prevent arbitrary, discriminatory and unreasonable application by state officials and triers of fact. *See, e.g., Smith v. Goguen,* 415 U.S. 566, 572-73 (1974) (citing *Grayned v. City of Rockford,* 408 U.S. 104, 108-09 (1972) where the void for vagueness doctrine is discussed in greater detail). Contained within Minn. Stat. § 259.28, subd. 2, are various preferences in the adoption proceedings based on ethnic heritage and race. Given the complex mixing of religions, cultures, and races that has been deeply rooted in this nation's history and encouraged by this Court's decisions, it has become increasingly difficult to determine with certainty and accuracy a person's racial or ethnic heritage. In fact, the need to make such determinations is a reprehensible task that should not need to be undertaken.[4] Yet, the statutory scheme here at issue sets forth preferences where competing adoption petitions are filed based on a child's race or ethnic heritage.

Clearly, the statute is defective in that it provides no guidance as to how a court is to determine what a child's or the

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[4] *See* Bartholet, *supra* note 1, at 1175-76 for a discussion of the inherently problematical issues that arise when such statutes are applied and the need arises to categorize people based on the shade of their skin color or determine percentages of ethnic background.

prospective adoptive parents' racial and ethnic background is, and how, as a practical matter, trial courts hearing adoption petitions are to analyze the preferences. Not only are the adoptive children being subjected to an unfair and unworkable statutory framework, but the adoptive parents and the biological parents are also provided with no clear guidance or direction. Clearly, this significant defect in the statutory scheme raises important constitutional issues that have been either ignored or inadequately addressed by the Minnesota Supreme Court and that should be heard by this Court of last resort.

II. *THE STATE OF THE LAW ACROSS THE NATION WITH REGARD TO TRANSRACIAL ADOPTIONS AND ISSUES OF RACE AND ETHNICITY IN ADOPTIONS IS IN A CONFLICTED AND CONFUSED STATE, REQUIRING CLARIFICATION AND DIRECTION FROM THE UNITED STATES SUPREME COURT.*

In her article on transracial adoptions, Elizabeth Bartholet documents the numerous approaches the various states, courts, and legislatures have taken in dealing with the issue of race and ethnic heritage in the adoption system. For example, some state and federal courts and state legislatures provide that race and ethnicity cannot be used as a sole factor or as an automatically dispositive factor in adoption placement. Other

courts actually require that race be considered.[5] Significant constitutional issues have arisen through the use of the race and ethnicity in state-supervised and frequently state-directed adoptions. As a result, the federal and state courts of this nation have ruled in a variety of directions in dealing with this difficult issue of how race and ethnicity of a child, of the biological parents, and of the adoptive parents is to be applied. These issues frequently arise is the review of competing adoption petitions filed by relatives, foster parents, and unrelated third parties. The fact that a plethora of state statutes, state court decisions, and federal court decisions have arisen to deal with this issue indicates that direction from the highest court in the land is necessary regarding how race and ethnicity are to be factored into adoption decisions

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[5] For examples of statutes providing a preference for placement with families of the same racial or ethnic heritage, see Minn. Stat. § 259.255; § 259.28; Ark. Stat. Ann. § 9-9-102. For an example of a state with a mandatory waiting period during which children are held while a same race family is sought, see Cal. Civ. Code § 222.35 (1992); § 222.37 (1992); for an example of a statute requiring a state to make an effort to find a same race, ethnic or religious family, see N.Y. Comp. Codes R. & Regs. tit. 18, § 421.18(c) (1990). An example of a statute with simply a preference cited would be Mass. Regs. Code tit. 110, §7,101(1)(d) (1986). For statutes making it illegal to deny adoption solely on the basis of race, see Ohio Admin. Code § 5101:2-48-03 (1990); Md. Fam. Law Code Ann. § 5-311 (Supp. 1991); Wis. Stat. Ann. § 48.82(6) (West Supp. 1991); Conn. Gen. Stat. Ann. § 48.82(6) (West Supp. 1992); Ky. Rev. Stat. Ann. *§ 199.471 (Baldwin 1976).*

For examples of courts that have said race cannot be used as the sole factor, *see, e.g., McLaughlin v. Pernsley,* 693 F.Supp. 318, 324 (E.D.Pa. 1988); *In re Adoption of a Minor,* 228 F.2d 446, 448 (D.C. Cir.1 1955); *Compos v. McKeithen,* 341 F.Supp. 264, 266 (E.D.La. 1972); *In re Davis,* 502 Pa. 110, 465 A.2d 614, 624 (1983); *In re Adoption of Gomez,* 424 S.W.2d 656, 659 (Tex. Civ. App. 1967). For examples of cases where race can be used as a significant and even determinative factor, *see e.g., Drummond v. Fulton County,* 563 F.2d 120, 1205 (5th Cir. 1977) cert. denied, 432 U.S. 905 (1978); *In the Matter of the Petition of R.M.G. & E.M.G.,* 454 A.2d 776 (D.C. 1982); *In the Matter of the Petition of D.I.S. for Adoption of S.A.U.,* 494 A.2d 1316 1327 (D.C. App. 1985). For examples of cases requiring that race be considered, *see, e.g., Drummond,* 563 F.2d at 1205-06; *In the Matter of B. Children,* 391 N.Y.S.2d 812, 813-14 (N.Y. Fam. Ct. 1977); *In re Davis,* 465 A.2d 614, 622 (1983).

and the overarching concern of the best interests of the children involved.

III. *THE ACTIONS OF THE MINNESOTA SUPREME COURT IN THIS MATTER REFLECT A SIGNIFICANT DEPARTURE FROM THE USUAL COURSE OF JUSTICE, FURTHER JUSTIFYING INTERVENTION BY THE UNITED STATES SUPREME COURT TO REVIEW SUCH STATUTES AND PROVIDE FURTHER DIRECTION TO STATE AND FEDERAL COURTS AND STATE LEGISLATURES DEALING WITH THE ISSUE OF RACE AND ETHNICITY IN ADOPTION PROCEEDINGS.*

Statutes such as the statute here at issue dealing with racial and ethnic matching policies in the adoption process are clearly in conflict with the basic law of the land regarding discrimination on the basis of race and ethnicity. The history of racial and ethnic discrimination is a long and complex chapter in American history and the area of adoption is one of the few remaining areas of state and governmental involvement where race and ethnicity have been systematically used as a basis for decision making, completely contrary to the dominant ideology against discrimination and favoring integration. Such notions of equality and integration go back to the seminal decision of *Brown v. Board of Education,* 347 U.S. 483 (1954) and the subsequent *Loving* and *Palmore* decisions.

The statute and the actions of the Minnesota Supreme Court are reflections of a nation-wide dilemma in the area of adoption. As the previously cited cases indicate, a state is not permitted to insist that race or ethnicity count as a factor in the ordering of people's most private lives. In the more public areas of housing, employment, the use of public accommodations, and education, race and ethnicity have long ago been removed as factors for consideration. Race conscious action has generally been allowed only where it can be justified on the grounds of compelling necessity, or where it is designed to benefit racial minority groups either by

avoiding or preventing discrimination or by remedying its affects, as in the case of affirmative action. Such exceptions have, however, been narrowly defined and affirmative action has always been controversial in this country. In fact, in recent years, the Supreme Court has gone so far as to find that even benign racial classifications are highly suspect and must be limited to narrowly defined situations. *See, e.g., City of Richmond v. J.A. Croson Company,* 488 U.S. 469 (1989).

What the statutory scheme and common law doctrines at issue in the case at hand demonstrate is something even beyond affirmative action and actually amounting to a resurrection of what most had assumed to be the long dead doctrine of "separate but equal." *See, Brown v. Board of Education, supra.* The Minnesota legislature in its efforts to deal with the holding by the Minnesota Court of Appeals that the statute was unconstitutional in effect codified the doctrine of separate but equal. The legislature stated that as long as all races and ethnic groups are treated equally, the law of adoption could provide that a preference should be made for same race and same ethnic background adoptions. Clearly, these racial and ethnic matching policies fit none of the recognized exceptions to the anti-discrimination norm.

There is in fact no compelling necessity for racial matching on a level comparable to a national emergency threatening the survival of a culture or a people. Professor Bartholet very capably makes and supports this argument that no minority communities within this nation are threatened with extinction, there is no threat through current adoption practices towards the existence or preservation of any minority community or its culture, nor can racial matching policies be rationalized as programs to eliminate or to remedy the effects of prior

discrimination or otherwise to benefit minorities as a group.[6] Bartholet goes on to say that even a mild preference is unwise as a matter of social policy, given that such preferences violate the principle of the core of our nation's adoption laws, that the best interests of the child should supersede all else.[7]

The literature is truly voluminous in the country today regarding problems of families of all races and ethnic backgrounds falling apart, the increasing numbers of single parents, ever more broken families, and families under attack as a result of violence and drugs.[8] Perhaps at no time in American history has there been more of a need for abandoned, threatened children to be placed in safe homes through adoption; nor has the demand by adoptive parents ever been greater. The statutes and common law as applied by the State of Minnesota do not alleviate that situation, and in fact, make the placement of children, of whatever race or background with parents or whatever race and background, more difficult.

There has been no compelling evidence presented indicating that policy reasons exist justifying an insistence upon same race and same ethnic heritage adoptions. Without such a compelling policy reason underlying the statutes and common law policies as exist in this matter, we are faced with

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[6] Bartholet, *supra* note 1 at 1231-32. It must be noted, however, that this Court has upheld the Indian Child Welfare Act, 25 U.S.C. §§ 1901-63 (1988), which mandates a preference for placing Indian children with Indians as opposed to non-Indians. *See, Mississippi Choctaw v. Holyfield,* 490 U.S. 30 (1989). It is clear, however, that the American Indian experience in the United States historically, culturally and legally has been unique. American Indian tribes have been actively involved in enforcing the Indian Child Welfare Act, and the cases interpreting that Act offer little precedent to the issues at hand. *See also,* Hollinger, *Beyond the Best Interests of the Tribe: The Indian Child Welfare Act and the Adoption of Indian Children,* 66 U. Det. L. Rev. 451 (1989).

[7] Bartholet, *supra* note 1 at 1252.

[8] *See, e.g.,* Popinoe, *Break-up of the Family: Can we Reverse the Trend?* 119 U.S.A. Today 50 (May 1991); Sorrentino, *Family Troubles,* 15 The Wilson Quarterly 18 (Spring 1991); Johnson, *The Changing Family,* 57 Vital Speeches of the Day 393 (April 15, 1991); Bauerlein, *Why Doesn't the U.S. have a Family Policy?* Sept/Oct. 1991 Utne Reader 17.

a clear and blatant departure from the usual course of justice in the area of discrimination based on ethnicity and race. This departure from the usual course of justice goes to the core of the American family and significant problems facing our nation today, thus making it all the more imperative that this Court grant the petition of the Sharps and review the statutes and adoption case law applied by the Minnesota Supreme Court in this matter.

CONCLUSION

For these various reasons, this petition for certiorari should be granted. This dispute raises a variety of significant constitutional issues either inadequately or incorrectly addressed by the Minnesota Supreme Court. The dispute also raises legal issues that are in a conflicted and confused state across the nation. Finally, the actions of the Minnesota Supreme Court reflect a signficant departure from the usual course of justice. For all of these reasons, it would be appropriate for the United States Supreme Court to fully review the issues raised herein.

Respectfully submitted,

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